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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RYAN JOHN SANDERS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-10943

Trial Court No. 3AN-07-18 CR

MEMORANDUM OPINION

AND JUDGMENT

No. 5991 — November 27, 2013

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael Spaan, Judge.

Appearances: Michael Schwaiger, Assistant Public Defender,
and Quinlan Steiner, Public Defender, Anchorage, for the
Appellant. Kenneth M. Rosenstein, Assistant Attorney General,
Office of Special Prosecutions and Appeals, Anchorage, and
Michael C. Geraghty, Attorney General, Juneau, for the Appel-
lee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats,
Senior Judge.*

COATS, Senior Judge.

MANNHEIMER, Chief Judge, concurring.

* Sitting by assignment made pursuant to article IV, section 11 of the Alaska Constitution and Administrative Rule 23(a).

Ryan John Sanders was convicted of murder in the second degree for killing Travis Moore and murder in the first degree for killing Ashlee Richards. (He was also convicted of tampering with evidence, a charge which he did not contest.) At trial, Sanders argued that he was not guilty because he had acted in self-defense or, at most, was guilty of manslaughter because he had acted in the heat of passion. But the jury rejected Sanders's defense.

On appeal, Sanders argues that the superior court erred in refusing to admit into evidence statements that an unavailable witness, Carmela Bacod, made in a telephone call to the investigating officer two days after the homicides. Bacod told the investigating officer that Ashlee Richards, one of the victims in the homicide, had made statements to her indicating that a group of individuals, including Travis Moore and Richards, believed that Sanders had stolen some money from another member of the group, Raven Ketzler. Bacod told the police that Richards said to her that they were going to go over to Sanders's residence to confront him. Bacod added that she thought the confrontation was likely to be violent.

Sanders sought to admit Bacod's statements concerning her conversation with Richards to show that Moore and Richards had gone over to Sanders house to rob him, and that this explained the violent incident that followed. The superior court concluded that this double-hearsay evidence was not admissible. For the reasons explained in this opinion, we affirm that decision.

Sanders also argues that the superior court erred in admitting into evidence inaccurate statements that Sanders's girlfriend, Melissa Castagno, and Sanders's brother, Joseph Sanders, made to the police shortly after the homicide. The prosecution argued that these statements were demonstrably false and that the declarants lied in order to exculpate Ryan Sanders. The trial court admitted these statements as non-hearsay to

establish the course of the police investigation. We conclude that the superior court erred in admitting these statements. But we also conclude that the error was harmless.

Factual and procedural background

The basic facts of this case are mostly uncontested. In the early morning hours of January 1, 2007, police responded to a fatal shooting. Ryan Sanders had shot and killed Travis Moore and Ashlee Richards.

Detective Mark Huelskoetter was the primary investigator in this case. He interviewed Ryan Sanders, his brother Joseph Sanders, Melissa Castagno, (Ryan Sanders's girlfriend), and other witnesses.

In his interview, Ryan Sanders stated that he had a number of friends come over to drink and have a good time on New Year's Eve. At about 10:30 or 11:00 p.m., Travis Moore called him, and Sanders invited him to come over. Moore brought his girlfriend (Sherrell Porterfield) and another female whose name Sanders did not know (Ashlee Richards).

Sanders stated that he, his brother Joseph, and Travis Moore were in the bedroom talking when Melissa Castagno walked in. At this point, Moore took out a pistol and whacked Sanders on the head with it. Sanders stated that Moore hit him hard enough that everything went white. Then he felt a bunch of blood. Sanders got his own gun, a .38 revolver, and fired several times at Moore. Sanders stated that he acted simply out of instinct and because he did not want others in the house to get hurt.

Moore ran out of the house, leaving his gun on the floor. Sanders grabbed another gun, a Glock, and pursued Moore. When Sanders ran into the driveway, he saw someone in a jacket running away and thought it was Moore. He shot several times at this person. (This person was not Moore; it was Ashlee Richards.) He said he thought Richards was Moore and that he thought Moore might be going to get bullets for his gun

or to get another gun. He told Detective Huelskoetter that he realized that he was in trouble, because he had been shooting at two people when he thought he was shooting at one.

Following the shooting, Sanders went back into the house, took the magazine out of the Glock, and put it on the table. Sanders indicated that the Glock held thirteen rounds and was fully loaded before the incident began. He thought the Glock still had three or four rounds left in it. He said that he was the only person who had fired any shots. He said that he did not believe that Moore's gun was loaded. (He said that Moore had recently asked him — Sanders — to buy ammunition for Moore's gun.)

Huelskoetter asked Sanders what started the argument that led to the shooting and why Moore hit him in the head with the gun. Sanders said there was no argument and he did not know why Moore hit him. He stated that he and Moore were good friends "for the most part," although they had occasionally had problems. He said that Moore thought Sanders's brother, Joseph, had taken some money from Moore, but that he (Ryan Sanders) and Moore did not have any significant issues. He had no idea what could have led to the incident. He denied that there was any dispute about money.

Sanders stated that he and Moore talked once a day, and that Moore would come over to Sanders's place one to three times a week. In fact, Moore had been over to Sanders's place the day before.

When confronted, Sanders admitted that he had asked Jeremy Castagno to get rid of the .38 revolver that he had used to shoot Moore. (This was the basis of the tampering with evidence charge.) He stated that he wanted to get rid of the .38 because he had recently bought it from someone for \$100 under questionable circumstances.

At trial on the murder charges, Sanders contended that he had acted in self-defense.

In his opening statement, Sanders's attorney indicated that Sanders had accepted responsibility for his actions. He stated that "the focus of this trial is to place a series of essentially uncontested facts within the legal framework." He emphasized that a person is allowed to use deadly force in response to being assaulted with a dangerous weapon in his own home. He also argued to the jury that a defense of heat of passion was valid in these circumstances.

In his closing argument, Sanders's counsel argued that Sanders's statement to the police had the ring of truth. If Sanders had wanted to lie, he could easily have said that Moore had threatened to kill him and Sanders could have said that he thought that Moore's gun was loaded. Instead, Sanders had stated that Moore had not said anything before he hit him, that there was no argument, and that he did not believe that Moore's gun was loaded. But the attorney emphasized that Sanders was entitled to defend himself from a serious and unprovoked attack in his own home.

Throughout the trial the prosecutor contended that Sanders was not entitled to claim self-defense because he had used more force than was necessary to defend himself. The prosecutor pointed out that Sanders had admitted that he thought Moore's gun was unloaded and that there were other people in the apartment who could have come to Sanders's aid. The prosecutor argued that Sanders had run right by Moore's body, shooting Ashlee Richards as she was running away. Evidence showed that Sanders had fired multiple times at Moore, striking him more than once. Moore ran from the residence and collapsed dead in the snow near the apartment entrance. Sanders ran right by Moore's body, and started firing at Richards as she was running away. Sanders chased Richards down the driveway and shot several times, causing Richards to fall to the ground. Sanders then approached Richards and fired several more times. In total, Sanders fired his Glock at least 11 times outside of the apartment. The prosecutor

contended that this evidence established that Sanders had used excessive force in defending himself.

At the conclusion of the trial, the jury convicted Sanders of murder in the second degree for killing Moore, murder in the first degree for killing Richards, and tampering with evidence.

The superior court did not err in refusing to admit Carmella Bacod's statements to Detective Huelskoetter

On January 3, 2007, two days after the homicides, Carmela Bacod called Detective Huelskoetter. He recorded the interview.

In the interview, Bacod stated, "Ryan Sanders, he stole money from one of our friends, and they wanted to go beat him up to get the money back, 'cause it was pretty much a lot of money, and I think that's what like, triggered it to happen." Bacod said the money was stolen from a girl named Raven [Ketzler], whose last name Bacod did not know. Richards had told Bacod on the phone a week and a half earlier that Richards, Ketzler, Moore, Porterfield, and Sanders were hanging out, they went to sleep, and when they woke up the money and Sanders were gone. They assumed that Sanders had stolen the money, and Richards had heard that Sanders had bought drugs and alcohol with the money.

Bacod said that she had never met Sanders, that she had known Moore for "a couple months," and that Richards was her best friend. Sanders wanted to hang out with the others, and Bacod "was supposed to go with them to their house that night."

Huelskoetter asked Bacod:

Q. [Y]ou know that Travis [Moore] wanted to beat Ryan [Sanders] up over the money?

A. Yeah.

Q. And that when they were goin' over there that was pretty much the idea, is that Travis [Moore] was gonna beat him up?

A. Yeah.

...

A. Ashlee [Richards] just told me that they wanted the money back, and then they were gonna jump 'em for it. But, uh, she told me that earlier they tried before or something like that, and Ryan's [Sanders's] brother got mad or something and pulled a gun on Raven's face, or something like that. I don't know. She didn't tell me much about that.

...

Q. So, now, just let me see if I understand correctly, that you knew that kinda the plan was that Travis [Moore] and his girlfriend and Ashlee [Richards] and — and some other girl named Raven were gonna go over there and essentially jump them to get their money back?

A. Not — not jump, like, you know, like, talk.

Q. Okay. They were ...

A. But ...

Q. ... gonna try to talk ...

A. ... obviously ...

Q. ... it out, or ...

A. ... they're young, so, you know, there's gonna be violence in it.

Q. Okay.

A. But I couldn't stop them.

Q. Right. So, they — they — I mean basically the only reason they were going over there was to get the money back.

A. Probably.

Bacod was unavailable as a witness at Sanders's trial; she died in an automobile accident in June 2008.

Sanders asked the trial judge to admit Bacod's statements to the police. Sanders acknowledged that this proposed evidence contained two layers of hearsay: first, the statements that Richards purportedly made to Bacod, and second, Bacod's ensuing communication of those statements to the police officer. But Sanders argued that a hearsay exception covered each layer of hearsay.

With respect to Richards's statements to Bacod, Sanders argued that these out-of-court statements fell within the "state of mind" hearsay exception codified in Alaska Evidence Rule 803(3). Specifically, Sanders argued that Richards's statements showed that she and Travis Moore intended to rob Sanders, and that this explained Moore's act of striking Sanders with a pistol — the act that, according to Sanders, led to the homicides.

With respect to Bacod's statements to the police — *i.e.*, Bacod's description of her conversation with Richards — Sanders argued that these out-of-court statements should be admitted under the "residual" hearsay exception codified in Evidence Rule 804(b)(5).

The trial judge denied Sanders's motion to admit Bacod's statements to the police. The judge observed that these statements were clearly offered as hearsay — *i.e.*, offered to prove the truth of the matters asserted — and that evidence concerning Bacod's statements to the police was not admissible unless both layers of hearsay were covered by hearsay exceptions.

The judge also pointed out that, even according to Bacod's description of her conversation with Richards, Richards never said that she and Moore were going to rob Sanders or otherwise use violence to recover the money. In fact, according to Bacod, Richards said only that she and Moore were going to talk to Sanders. It was Bacod who suspected that this talking would end in violence: Bacod told the police, "[T]hey're young, so, you know, there's gonna be violence in it."

The judge then turned to Sanders’s argument that Bacod’s statements were covered by the “residual” exception found in Evidence Rule 804(b)(5). The judge observed that the residual hearsay exception “is one of rare application and is not meant to be used as a catch-all for the admission of statements falling just outside the border of recognized [hearsay] exceptions.” Rather, the residual exception should be applied only when the hearsay statements in question exhibit “guarantees of trustworthiness equivalent [to] or exceeding the guarantees [reflected] in the [normal] exceptions to the hearsay rule.” (Quoting this Court’s decision in *Shakespeare v. State*, 827 P.2d 454, 460 (Alaska App. 1992)).

The judge then concluded that Bacod’s statements to the police did not exhibit guarantees of trustworthiness equivalent to, or exceeding, the guarantees found in the normal exceptions to the hearsay rule. The judge again noted that Bacod did not claim that Richards announced an intention to use violence against Sanders; rather, this was Bacod’s gloss on the situation — her speculation about what would happen when Richards and Moore went to speak to Sanders. The judge pointed out that the timing of Bacod’s conversation with Richards was unclear — specifically, how long before the homicide this conversation took place. The judge also pointed out that the court had little or no information about Bacod’s relationship to the various people involved, or Bacod’s potential motivation for contacting the police and making these statements. Based on these factors, the judge ruled that Bacod’s statements to the police were not sufficiently trustworthy to be admissible under Evidence Rule 804(b)(5).

We conclude that the trial judge did not abuse his discretion in rejecting this evidence. As we explained in *Ryan v. State*, 899 P.2d 1371, 1375 (Alaska App. 1995), evidence admitted under the residual hearsay exceptions must possess “particularized

guarantees of trustworthiness” making it “so trustworthy that adversarial testing would add little to its reliability.”²

In the present case, Sanders offered Bacod’s out-of-court statements for the purpose of proving that Richards and Moore went to Sanders’s house intending to use violence to retrieve money from Sanders or his brother. But even according to Bacod, Richards never said that she or Moore intended to use violence; instead Richards said that they wished to talk to Sanders about the money. In Bacod’s statements to the police, she acknowledged that the possibility of violence was only her speculation, or her after-the-fact gloss on her conversation with Richards. And, as the trial judge noted, there was essentially no evidence regarding Bacod’s potential motivation for contacting the police. For all these reasons, we uphold the trial judge’s ruling.

Sanders additionally argues that he had a due process right to present a defense, and that it was critical to his defense to admit Bacod’s statements. But in general, a trial court does not commit error by properly applying the evidence rules.³ We have previously pointed out the lack of reliability of Bacod’s recorded statement to establish the proposition for which it was offered. We conclude that the trial court’s proper application of the evidence rules did not unfairly limit Sanders’s ability to present a defense.

² (quoting *Idaho v. Wright*, 497 U.S. 805, 820-21 (1990)) (quoted with approval in *Vaska v. State*, 135 P.3d 1011, 1020 n. 46 (Alaska 2006)).

³ *Cleveland v. State*, 91 P.3d 965, 974 (Alaska App. 2004) (“[T]he right to present a defense does not include the right to demand that the trial judge disregard the rules of evidence. In particular, this Court has held that a trial judge does not abridge a criminal defendant’s right to present a defense when the judge applies the hearsay rules to exclude proposed defense testimony.”); *Valentine v. State*, 215 P.3d 319, 325 (Alaska 2009) (due process right to present a defense is not absolute and is properly limited by considerations such as relevance and Evidence Rule 403’s balancing test).

The superior court erred in admitting the statements of Joseph Sanders and Melissa Castagno, but the error was harmless

When Joseph Sanders was interviewed by Detective Huelskoetter shortly after the homicides, Sanders stated that he saw Moore hit Sanders with a gun, and then he heard a shot. He was “almost a hundred percent” positive that Moore fired a shot. Then Ryan Sanders fired multiple shots. (Joseph also stated that he and Moore had had a dispute about money, but that Ryan Sanders and Moore “were cool.”)

When Detective Huelskoeter interviewed Melissa Castagno, she stated that Joseph Sanders had picked up an AR-15 and started shooting at Moore when Moore turned on him.

At trial, during the testimony of Detective Huelskoetter, the prosecutor wanted to have the detective testify about his interviews with Joseph Sanders and Melissa Castagno. The prosecutor wanted to introduce the statements to show that Joseph Sanders and Melissa Castagno had lied to protect Ryan Sanders.

Sanders’s attorney argued that the prosecutor was introducing the testimony under the theory that, because Joseph Sanders and Melissa Castagno had lied, this indicated that Ryan Sanders had lied. He argued that the statements were not relevant for that purpose.

The trial judge ruled that he would not allow Detective Huelskoeter to give an opinion about whether either of these witnesses had lied. But he ruled that he would allow the testimony about the two witnesses’ statements to show the course of the police investigation. The prosecutor then asked Huelskoetter, “Isn’t it a fact that Melissa Castagno told you that inside the apartment ... Joe Sanders fired the AR-15?” Huelskoetter responded, “Yes, she did.” The judge promptly instructed the jury that this statement was “not for the truth of the matter asserted, but simply to show the course that the investigation took.”

The prosecutor also asked Huelskoetter, “Isn’t it a fact that [Joseph Sanders] told you during his interview that Travis [Moore] fired at [Sanders] first?” Huelskoetter said, “Yes, that’s what he told me.” The judge instructed the jury, “And the same caution that I will instruct you is that statement is not offered for the truth of the matter.”

On cross-examination, Huelskoetter agreed that Sanders made it “very clear” that the AR-15 was not assembled that evening and was not involved. He also agreed that Sanders had stated that Moore did not fire at him first.

Neither Joseph Sanders nor Melissa Castagno testified at trial.

During his closing argument to the jury, the prosecutor mentioned that Sanders had admitted asking Jeremy Castagno to get rid of the .38 revolver for him. He also argued that Joseph Sanders and Melissa Castagno had lied for Sanders. Sanders did not object to this argument.

On appeal, Sanders argues that the trial judge erred in allowing Huelskoetter to testify about these out-of-court statements. We agree. The judge ruled that these statements were admissible for the purpose of showing the course of the police investigation. But in argument before this Court, the State’s attorney was unable to explain how these statements altered the course of the investigation, or (assuming they did) why this was important.

It is common for a police officer to testify about things that other people told them when the question is why the officer did or did not do something. For example, a police officer might explain that they went to a particular location because their dispatcher informed them of a 911 call reporting a robbery at that location. If this information is offered, not to prove that a robbery occurred, but rather for the non-hearsay purpose of explaining why the officer went there to investigate, and if an explanation of the officer’s action would be relevant to some issue raised at trial, then the

officer's testimony about the dispatcher's out-of-court statement would be admissible to explain the course of the investigation. *See Stumpf v. State*, 749 P.2d 880, 893 (Alaska App. 1988).

But the statements that Detective Huelskoetter attributed to Joseph Sanders and Melissa Castagno did not provide an explanation for why the police investigation of the homicides proceeded (or failed to proceed) in a particular way. Nor did the State explain how the course of the investigation was relevant to any issue raised at trial. We therefore conclude that the trial judge erred in admitting the challenged testimony under this theory.

We also conclude, however, that the error was harmless because it did not appreciably affect the jury's verdict.⁴

In his opening statement, the prosecutor acknowledged that Sanders was contending that he acted in self-defense. And the prosecutor acknowledged that Sanders had received "a good whack above his left eye." The prosecutor indicated that the state's case was that Sanders had used excessive force.

The State had a very strong case that Sanders had used excessive force. An important part of the State's case was the statement that Sanders made to Detective Huelskoetter shortly after the homicides. As Sanders's attorney pointed out, Sanders's statement was so inculpatory that there was no reason to disbelieve it. Sanders indicated that Moore had not made any threats, but had hit him for no reason. Sanders said he thought that Moore's gun was unloaded. Sanders stated that he acted out of instinct. Sanders shot Moore numerous times. As Moore ran away, Sanders grabbed his Glock, and ran right by Moore's body. Sanders apparently thought that the fleeing Richards was

⁴ *See Love v. State*, 457 P.2d 622, 634 (Alaska 1969) (holding that, for instances of non-constitutional error, the test for harmlessness is whether the appellate court "can fairly say that the error did not appreciably affect the jury's verdict").

Moore, and shot her several times. After she fell, the State's evidence showed that Sanders fired several more shots into her at close range.

Although the prosecutor did mention Joseph Sanders's and Melissa Castagno's statements in his closing argument, the overwhelming thrust of his argument was based upon the State's contention that the overwhelming evidence showed that Sanders had used excessive force.

In his rebuttal argument, the prosecutor appeared to fully accept Sanders's version of the incident, based upon Sanders's statement. The prosecutor conceded that the fact that Sanders was hit forcefully on the head with a gun had to be frightening. The prosecutor pointed out that Sanders admitted that he was confident that Moore's gun was not loaded. The prosecutor argued that Sanders knew that there were other people around who could break up the fight. Yet Sanders fired multiple times at Moore, and he fired at Moore when Moore was running away. He again set out the evidence which supported his contention that Sanders murdered Ashlee Richards.

It seems clear that the case against Sanders turned on whether he used excessive force. The statements of Joseph Sanders and Melissa Castagno do not appear to have had any significant impact on the outcome of Sanders's trial. We accordingly conclude that the trial court's error in admitting these statements was harmless.

Conclusion

The judgment of the superior court is AFFIRMED.

Judge MANNHEIMER, concurring.

I write separately to address one additional aspect of Sanders’s claim that he should have been allowed to introduce evidence of Carmela Bacod’s statements to the police.

In her statements to the police, Bacod recounted statements that Ashlee Richards had earlier made to her. One of the things that Richards purportedly said to Bacod was that she (Richards) and her friend Travis Moore planned to go to Sanders’s residence to confront him about some missing money. Sanders offered this hearsay evidence to prove that, when Richards and Moore later came to his house, they came with the intention of confronting him and, if necessary, retrieving the money by force — thus tending to prove Sanders’s assertion that Moore was the one who initiated the fatal confrontation, and that he did so by unexpectedly striking Sanders with a pistol.

Sanders argues that Richards’s statement to Bacod falls within the hearsay exception codified in Alaska Evidence Rule 803(3) — the exception for statements describing the declarant’s then-existing mental, emotional, or physical condition. Under this rule, a person’s statement about their future plans is admissible to prove “[their] ... future action”. But Sanders’s main purpose was not to prove Richards’s future actions, but rather *Moore’s* future actions.

The final paragraph of the Commentary to Evidence Rule 803(3) explains that Rule 803(3) does not allow a litigant to introduce one person’s statement about their current mental state (including their current plans) for the purpose of proving *another person’s* future actions:

The addition of the words “offered to prove [the declarant’s] present condition or future action” limits [this hearsay] exception to avoid results like *People v. Alcalde*, 148 P.2d 627 (Cal. 1944). For the statements of one person

as to his mental or emotional condition to be used against another [person], [the residual hearsay exception codified in Rule 803](23) must be satisfied. This modifies the *Hillmon* rule.

In order to understand what this last sentence of the Alaska Commentary means (“This modifies the *Hillmon* rule.”), one must be familiar with the United States Supreme Court’s decision in *Mutual Life Insurance Co. v. Hillmon*, 145 U.S. 285, 295; 12 S.Ct. 909; 912, 36 L.Ed. 706 (1892).

Hillmon involved a controversy between three life insurance companies and Sallie Hillmon, the purported widow of John Hillmon. The insurance companies had issued policies on the life of John Hillmon, and Sallie Hillmon asserted that her husband had died (accidentally, of a gunshot wound) while those policies were in force.

The insurance companies, for their part, asserted that Mr. Hillmon was not dead. Rather, “[Hillmon and his wife], together with ... divers other persons, ... conspir[ed] to defraud the [insurance companies by] procur[ing] ... all the [life insurance] policies, and afterwards, ... falsely pretend[ing] and represent[ing] that Hillmon was dead, and that a dead body which they had procured was [Hillmon’s], whereas in reality [Hillmon] was alive and in hiding.”¹

Specifically, the insurance companies introduced evidence “tending to show that the body [of the deceased] was not the body of Hillmon, but was the body of one Frederick Adolph Walters.”² According to the Supreme Court’s description of the case, “there was much conflicting evidence” on the question of whose body this was,

¹ *Hillmon*, 145 U.S. at 286, 12 S.Ct. at 910.

² *Id.*, 145 U.S. at 287, 12 S.Ct. at 910.

“including photographs and descriptions of the corpse, and of the marks and scars upon it, and testimony [regarding] its likeness to Hillmon and to Walters.”³

The insurance companies introduced evidence that Walters (a young man from Iowa) had been traveling in Kansas in late 1878 and early 1879, and that his family and sweetheart had received frequent letters from him during this time, but then the letters stopped in March 1879, and Walters was not heard from again.⁴

To link Hillmon to Walters’s disappearance, the insurance companies offered evidence that Walters, in two of his last letters (one to his sister, and one to his betrothed), spoke of his intention to leave Wichita and travel through “Colorado, or parts unknown to me”, in the company of “a certain Mr. Hillmon, a sheep trader”.⁵ According to these letters, Hillmon had hired Walters to help him start a sheep ranch.⁶

The trial judge ruled that these letters were inadmissible hearsay.⁷ But the Supreme Court disagreed:

The letters in question were competent ... evidence that ... [Walters] had the intention of [leaving Wichita], and of going with Hillmon[.] [This evidence] made it more probable both that [Walters] did go and that he went with Hillmon In view of the mass of conflicting testimony introduced upon the question whether it was the body of Walters that was found in Hillmon’s camp, this evidence might properly influence the jury in determining that question.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Id.*, 145 U.S. at 288-89, 12 S.Ct. at 911.

⁶ *Ibid.*

⁷ *Id.*, 145 U.S. at 287, 12 S.Ct. at 910.

Hillmon, 145 U.S. at 295-96, 12 S.Ct. at 912-13. The Supreme Court then concluded that the improper exclusion of these letters required a new trial.⁸

As can be seen, the Supreme Court declared in *Hillmon* that Walters’s letters could be offered to prove both *Walters’s* future actions and *Hillmon’s* future actions — “both that [Walters] did [leave Wichita] and that he went with Hillmon”. But this latter use of the hearsay — proof of a third person’s future actions — is not allowed by Alaska Evidence Rule 803(3). This is what the Commentary means when it says that our rule “modifies the *Hillmon* rule”. Under the Alaska rule, the evidence can only be offered to prove the *declarant’s* future actions.

This Court recognized and applied this limitation in *State v. McDonald*, 872 P.2d 627 (Alaska App. 1994). In *McDonald*, we held that statements made by the murder victim, Henderson, could be offered under Evidence Rule 803(3) to prove *her own* state of mind and future actions, but could not be offered under Rule 803(3) “to prove ... that *McDonald* — as distinct from Henderson — planned to be at the cannery [to meet Henderson].” *Id.* at 643 (emphasis added).

Returning to Sanders’s case, Sanders offered hearsay evidence of Ashlee Richards’s statements to Carmela Bacod. Sanders argued that Richards’s statements were admissible under Evidence Rule 803(3) because the statements showed Richards’s and Moore’s intentions — thus tending to prove their future actions.

To a certain extent, Sanders may have offered this evidence to prove Richards’s future actions. But Sanders’s main purpose was to prove the future actions of Travis Moore — because, according to Sanders, the events that led to the two homicides were triggered by Moore’s seemingly unprovoked assault on Sanders.

⁸ *Id.*, 145 U.S. at 300, 12 S.Ct. at 914.

Under Alaska's version of Evidence Rule 803(3), Richards's statements were not admissible for this purpose.